



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for authorization to obtain a return of all or a portion of the security deposit pursuant to Section 38.

The tenant SC (the "tenant") attended the hearing on behalf of both tenants. The landlord was present.

The tenant testified that the Application for Dispute Resolution dated September 25, 2017 was personally served upon the landlord who acknowledged receipt. The landlord testified she filed evidentiary material on September 25, 2017 and April 8, 2018 which was personally served upon the tenants shortly after filing. The tenant acknowledged receipt.

### *Preliminary Issue – Tenant's Request for Adjournment*

While providing her evidence, the tenant requested an adjournment to file evidence in response to the landlord's evidence filed April 8, 2018 and served upon the tenants some days later. The tenant testified she had been very busy and had not had time to do so and, further, that the other tenant JB was unable to attend the hearing because he was working.

*Residential Tenancy Branch, Rules of Procedure*, Rule 6.4 sets out the criteria for granting an adjournment:

*Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:*

- (a) the oral or written submissions of the parties;*
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;*
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and*
- (e) the possible prejudice to each party.*

The landlord opposed the application for the adjournment.

Although I considered all the criteria in Rule 6.4, I declined to adjourn the hearing as the tenants had ample notice of the hearing to arrange for evidence to be filed and to arrange for attendance as this was their Application for Dispute Resolution which was filed on September 25, 2017 (nearly 9 months ago). In addition, the tenant was unclear about the nature of any proposed evidence. There was no assertion the evidence proposed would be relevant to this matter or would aid in its determination. Finally, I find that rescheduling the hearing would unfairly prejudice the landlord who testified she wanted to proceed.

I informed the tenant at the hearing I would not adjourn the hearing and the hearing would continue as scheduled.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit because of the landlord's failure to comply with the provisions of section 38 of the *Act*?

#### Background and Evidence

Although a copy of the residential tenancy agreement was not filed, the landlord and the tenant agreed on the following. The parties signed a month to month tenancy agreement on or about March 15, 2017 commencing March 15, 2017 at a rental of

\$950.00 a month payable on the 15<sup>th</sup> day of each month. The tenants provided a security deposit and a pet deposit (together referred to as the “deposits”) in the amount of \$475.00 each for a total of \$950.00. No part of the deposits has been returned to the tenants.

The parties agreed a condition inspect report was completed when the tenants moved in and a copy provided to the tenants. They further agree that a condition inspection report was prepared when the tenants vacated the premises on September 15, 2017. The landlord testified a copy had been provided to the tenants. The tenant stated she had not received a copy.

The parties agreed the tenants provided written notice to the landlord on August 21, 2017 stating they were moving out on September 15, 2017.

The landlord testified the parties made an oral agreement on September 15, 2017 at the time of move-out that the landlord could apply the deposits to the rent owing from September 15 to October 15, 2017 as all parties realized the tenants had not provided a full month’s notice as required in the tenancy agreement and that the deposits or a portion thereof would only be returned to the tenants if a replacement tenant was found. No such replacement tenant rented the premises before October 15, 2017.

The tenant disputes that the tenants authorised the landlord to apply any of the deposits to rent. The tenant testified that the landlord agreed they could move out early (on September 15, 2017) without providing a full month’s notice and further agreed she would return the deposits to them right away after they moved. The tenant testified the tenants did not provide written authorization the landlord may retain any portion of the deposits and she expected the full amount to be returned shortly after they vacated the premises.

The tenant testified she did not provide the landlord with a notice in writing of the tenants’ forwarding address.

### Analysis

Section 38(1)(d) of the *Act* requires the landlord to either return the tenants’ deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant’s forwarding address in writing unless the tenant waives a right to the return of the deposits in writing under section 38(4)(a).

The *Act* states:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Pursuant to section 38(6)(b) of the *Act*, the landlord must otherwise pay a monetary award equivalent to double the value of the deposits.

The landlord testified she has not brought an application for dispute resolution claiming against the deposits pursuant to section 38(1)(d) of the *Act*.

The landlord testified the tenants agreed to the withholding of the deposits to be applied to rent. Section 38(1)(d) states any such waiver must be in writing. Both parties agree that the tenants have not waived their right to obtain a payment of the deposits in writing. I therefore find that there is no waiver in writing pursuant to Section 38(1)(d).

To obtain return of the deposits, the tenants must provide the landlord with written notice of a forwarding address within one year. The tenant testified that the tenants had not given the landlord written notice of a forwarding address.

The *Act* provides as follows in Section 39:

**Landlord may retain deposits if forwarding address not provided**

**39** Despite any other provision of this *Act*, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The tenants' forwarding address was provided to the landlord in the Application for Dispute Resolution document filed on September 25, 2017.

I find that if a tenant provides their forwarding address only on an Application for Dispute Resolution form, this does not meet the requirement of a separate written notice and is not deemed to be providing the landlord with a forwarding address. Accordingly, I find the tenants had not provided the landlord with their forwarding address for the return of the deposits as required under Section 39 prior to their Application and as such, their Application seeking return of the deposits was premature.

During the hearing, the tenants' forwarding address contained in the Application for Dispute Resolution was drawn to the landlord's attention. I therefore order, effective May 20, 2018, the landlord is deemed served in writing with the forwarding address of the tenants for the return of the deposits pursuant to Section 39.

### Conclusion

The tenants' application for a monetary order in the amount of the deposits is dismissed with leave to reapply should the landlord fail to return the deposits or file an Application for Dispute Resolution seeking to claim against the deposits within 15 days of May 20, 2018 .

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 15, 2018

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Residential Tenancy Branch